January 5, 2018

Malia Brink
Project Director
Standing Committee on Legal Aid and Indigent Defendants
American Bar Association
1050 Connecticut Ave, NW, Ste 400
Washington, DC 20036
Phone: 202-662-1584

Re: Nominee for ABA Exemplary Defense Project

Dear Ms. Brink:

Below is a summary of the purpose, operation and achievements of the Future Assigned Counsel Training (FACT) Program, established by the Harris County (Houston), Texas Public Defender’s Office.

FACT is a groundbreaking teaching initiative for young private attorneys in Harris County, Texas. They learn how to represent criminal defendants in court-appointed cases. They are taught how to build and maintain a practice, to ethically represent clients and to zealously defend them. Historically, there was no clear line from graduating law school to a private criminal defense practice representing poor clients. The FACT program lays out such a path.

The program is a creation of the Harris County Public Defender’s Office. It was meant to fill a void that the Public Defender’s Office could not cover. Even after the office opened, most criminal court appointments were still assigned to private lawyers (as much as 90 percent). Strengthening the pool of those private lawyers was needed. The best source are the new lawyers who are attracted to the work and believe that it is valuable.

Before its establishment in 2011, there had never before been a public defender’s office in Harris County, the nation’s third largest county. All criminal appointments were previously given to private lawyers on lists created by the courts. To be qualified to take court appointments...
private lawyers had to already have tried criminal cases to juries and needed a minimum three years’ experience. Typically, only former prosecutors met those standards.

Harris County provided no way for young idealistic lawyers to be trained to practice indigent criminal defense after law school. The result was a system of processing defendants where volume was valued over quality. A 2013 study by Council of State Governments Justice Center found that a significant number of private assigned counsel in Harris County exceeded the National Advisory Commission’s recommended caseload maximums. The study also found the Harris County Public Defender’s Office provided better outcomes for clients than private assigned counsel, not simply due to lower caseloads, but because of greater experience, commitment and resources.

In 2013, the Harris County Public Defender’s Office received a grant from the U.S. Department of Justice, Bureau of Justice Assistance to fund two FACT classes of ten lawyers each, over three years. The opportunity was advertised and applications were required. Each candidate was interviewed by members of the Public Defender’s Office. The 20 lawyers selected had each practiced less than three years since graduating law school. They made a commitment to represent indigent criminal defendants in Harris County upon completion of the program. The purpose of the program was to raise the quality of private assigned counsel to be more consistent with the results of the Public Defender’s Office.

As part of FACT, the lawyers attended Gideon’s Promise, a renown public defender training center, featured in the HBO documentary Gideon’s Army. The lawyers received over 130 hours of classes, including a two-week intensive program followed by biannual weekend seminars. That training included interviewing clients and witnesses, investigation, discovery, as well as all advocacy skills necessary to try a criminal case. When the lawyers returned to Houston, they were paired with experienced criminal defense lawyers and given a list of tasks to complete over the next year. Those tasks required observing and participating in all aspects of a criminal case with the assistance of their mentor. The lawyers were also tested on legal knowledge at the beginning and end of the program to measure improvement.

One of the materials provided in support of this nomination is a selection from Indigent Defense Attorney Mentoring in Texas: A Guide to Establishing a Mentorship Program (December 2015) (Prepared by the National Legal Aid & Defender Association on behalf of the Texas Indigent Defense Commission). The guide explains the FACT program and states:

From all accounts in interviews with mentors, mentees, and program administrators, participating in Gideon’s Promise was a highly valued experience. Interviewees from both FACT cohorts reported that their confidence soared, and their knowledge increased substantially. Mentees bonded with one another and with their mentors and formed a supportive community in which members
continue to reach out and rely on one another as they become more experienced practitioners.

The success of the FACT program led to changes in the Harris County court appointment system to promote the inclusion of lawyers beyond the previous limited qualifications. In 2016, the Harris County Criminal Courts at Law amended their rules to make completion of FACT a basis for qualification to the misdemeanor appointment list. The amended local rules are included as an attachment.

The program has graduated 20 lawyers. A third class of 10, funded by the Houston Endowment is currently in its first year. Success is measured by testing the lawyers’ knowledge of the law and commitment to indigent defense,. All participants improved their test scores. All completed the majority of assigned tasks. Most FACT graduates remained committed to a private practice serving poor criminal defendants in Harris County. This was documented in a report by Council of State Governments Justice Center which evaluated the program as part of the Department of Justice grant. A selection from that report summarizing participant experiences is included.

The program can be replicated. There are various ways to invest in such a program. The Gideon’s Promise component is extremely valuable, but it has added costs. However, much can be done with donated services and volunteer mentors. Regularly held seminars at a local venue, covering the topics necessary to practicing indigent criminal defense, could be a cost effective way to cover much of the same material. It is especially suitable for a large urban jurisdiction in which there are many competent criminal defense attorneys who can donate their time and knowledge to the education of young lawyers. Harris County has such a program that is managed by the Harris County Criminal Lawyers Association, but it is more informal than FACT and lacks the systematic training, mentoring and testing, that lead to meeting the qualifications for receiving court appointments.

For the reasons above, FACT is an exemplary defense project and should be recognized as such by the ABA.

Sincerely,

Alex Bunin
Alex Bunin
Chief Public Defender
The majority of indigent client cases in Harris County are assigned to private appointed counsel. The Harris County Public Defender Office handles a small portion (roughly eight percent) of indigent defense cases, including non-capital felonies, appeals, and misdemeanor mental health cases. To be approved for the entry-level county court misdemeanor appointment list, the county’s indigent defense plan requires a lawyer to have practiced three years or more and have tried to verdict five Class A and/or B misdemeanors as first chair, or ten as second chair. From that list, attorneys are assigned to accept cases as attorneys of the day, week, and term. To be approved for the district court appointment list, an attorney must have handled between three and eight felony jury trials, depending on felony degree level. These requirements are thought to be the most stringent of any county in the state.

Harris County has two indigent defense attorney mentoring programs. The Future Appointed Counsel Training (FACT) is a pilot project funded by a federal grant and administered by the Harris County Public Defender Office (HCPDO). The Harris County Criminal Lawyers Association (HCCLA) Second Chair Program is an all-volunteer, bar-run program that has been in place since 2008.

A. FACT

In 2013, the HCPDO received a $349,360 grant from the U.S. Department of Justice, Bureau of Justice Assistance to design and run FACT, a training, supervision, and mentoring program. HCPDO leadership applied for the grant out of concerns over the unintended consequences of the strict standard to get onto the appointment list. To be approved for the county court appointment list, an attorney must have handled between three and eight felony jury trials, depending on felony degree level. These requirements are thought to be the most stringent of any county in the state.

First, new practitioners could not get this experience since only a small fraction of cases reach trial, so the lawyers on the list tended to be former prosecutors or older lawyers. A shorter appointment list can result in a situation where lawyers are overloaded with cases. And, second, any young defense attorney on the list who is not a former prosecutor likely gained experience in a surrounding county with lower standards, and without any training. The grant supported two FACT classes, one that began in 2013 and one that started in 2014, of ten young defense attorneys each seeking to represent clients in appointed cases in Harris County.

Although the HCPDO provides in-house training for its own attorneys and offers free continuing legal education (CLE) for attorneys in the county, its leadership believed new lawyers wishing to receive appointments in Harris County courts needed additional training and supervision. With no coordinating oversight board to manage appointed counsel, and therefore administer a training program, the HCPDO applied for the grant monies to develop a program on its own. The primary distinction between FACT and other mentoring programs is that participants, in addition to receiving local mentorship and training, also enrolled in the nationally acclaimed Gideon’s Promise training.

Gideon’s Promise spans three years, with participants attending an initial, two-week summer training session and then semi-annual follow-up meetings. Upon completion, participants will have accessed 130+ hours of instruction from 12 current and former public defenders from around the country. Although designed and marketed toward public defenders, exceptions were made to allow the FACT participants to attend Gideon’s Promise.

Each FACT class of 10 participants traveled as a group to attend the annual Gideon’s Promise boot camp training in Birmingham, Alabama. Gideon’s Promise (formerly the Southern Public Defender Training Center) trains new lawyers on how to provide values-based, client-centered representation and how to resist following systemic pressures to cut corners and follow the status quo. In addition to teaching client-centered values, Gideon’s Promise seeks to build a community, teach storytelling and persuasion techniques, and develop pre-trial litigation and trial skills. Each student was assigned a Gideon’s Promise mentor to call upon for ongoing support after they returned home from boot camp. These mentors were located across the country.

When they returned to Houston, the FACT class attended a two-day training session about the criminal justice system in Harris County. Beyond information on the county (misdemeanor) and district (felony) courts, the training touched on substantive criminal law, the requirements included in the American Bar Association’s Ten Principles of an Effective Public Defense Delivery System, and the Performance Guidelines for Non-Capital Criminal Defense Representation from the State Bar of Texas. In addition, participants were paired with local mentors recruited from around the country.

28 Mental health cases are those of defendants flagged by mental health and jail records as having a diagnosed condition and recent prescription of psychoactive medications. Cases are assigned to the HCPDO in all 15 (soon to be 16) County Criminal Courts at Law via a computer algorithm.

29 See Council of State Governments Justice Center, Interim Report on Harris County Future Appointed Counsel Program 1 (on file with author).

30 See Council of State Governments Justice Center, Interim Report on Harris County Future Appointed Counsel Program 1 (on file with author).

31 See Council of State Governments Justice Center, Interim Report on Harris County Future Appointed Counsel Program 1 (on file with author).

32 See Meet Gideon’s Promise, the Organization behind Gideon’s Army, https://www.youtube.com/watch?v=e1Tx8rlcqWw.
from the Houston area. The primary distinction between the two types of mentors assigned to FACT participants was that the Gideon’s Promise mentors signed on for three years and focused on building a public defense community while the mentors from Harris County assisted mentees for one year and focused on creating a practice and working in Houston.

HCPDO recruited ten criminal defense attorneys practicing in Harris County to serve as FACT mentors. The attorneys had to commit to mentoring for one year and were provided with a $3,500 stipend to participate, half of which was given at the onset and the other half upon completing the requisite 75 hours during the year and the list of mentoring activities. As for mentees, HCPDO received 40 applications for the inaugural 2013 class and, through a competitive process, selected 10 attorneys. The applicants must have graduated from an accredited law school and passed the Texas Bar Examination by the time of entry into the program, but they could have no more than three years of experience as an attorney. In the second year, another ten participants were selected in much the same fashion.

FACT participants attended HCPDO’s in-house trainings that are open to the private defense bar in the county. In addition, specific in-house training programs were developed for, and open only to, the FACT participants. Mentees also attended a variety of trainings put on by the Harris County Criminal Lawyers Association (HCCLA) and the Texas Criminal Defense Lawyers Association (TCDLA).

For the first class, mentors were required to attend the FACT orientation in June 2013. Starting in September 2013, they met with their assigned mentees, attended court with mentees, attended monthly mentorship meetings, and helped their mentee complete all activities in the curriculum by August 2014. The program evolved from one-on-one mentoring to a system in which mentees could reach out to any of the mentors. Over the course of the year, mentees were expected to cover each topic on an 86-item list. Other accountability measures included a requirement that mentors sign a contract outlining their participation, and mentees had to report when expected milestones were completed. To measure the effect of the program, mentees took the same test covering basic criminal law practice knowledge before and after completion of the program.

By October 2015, none of the FACT participants had gained enough trial experience and/or accumulated the three years of experience required to get onto the Harris County appointment list. However, most had begun accepting appointed cases in surrounding counties that have less stringent requirements, with the expectation of joining the Harris County list.

From all accounts in interviews with mentors, mentees, and program administrators, participating in Gideon’s Promise was a highly valued experience. Interviewees from both FACT cohorts reported that their confidence soared, and their knowledge increased substantially. Mentees bonded with one another and with their mentors and formed a supportive community in which members continue to reach out and rely on one another as they become more experienced practitioners.

The only downside to Gideon’s Promise is its cost. A significant portion of the FACT grant funds went toward mentee tuition. Without an additional grant or appropriation from the county, the FACT model will not be able to continue in its original format after its first two years. HCPDO leadership is exploring alternatives to providing new indigent defense attorneys with a similar level of intensive training, community esprit building, and local mentoring without sending participants to Gideon’s Promise.

B. HCCLA SECOND-CHAIR

The HCCLA Second Chair Program is an all-volunteer project run through the Harris County Criminal Lawyers Association that matches mentors with mentees for six-month partnerships. The program began in 2008 and is administered by HCPDO Assistant Public Defender Sarah Wood, who is also the HCPDO’s Intern and Career Development Coordinator and organizes the FACT program. Ms. Wood began running the Second Chair Program while in private practice before joining the HCPDO.

Potential mentors and mentees apply through an online form on the HCCLA website. First Chair mentors must have five years of experience as criminal lawyers and have served as first chair in at least five trials. All levels of experience are eligible for Second Chair menteeships, but, because demand for mentors outstrips supply, preference is given to attorneys who have not previously been mentored.

Ms. Wood strives to match First Chair mentors with Second Chair mentees who will work well together, considering geography and areas of practice interest.34 With any volunteer program, the levels of engagement vary. HCCLA provides supportive aids including a “Helpful Hints” document that provides Do’s and Don’ts for First Chairs and Second Chairs.35 It makes clear to mentees that the onus is on them to seek out their mentors’ help. HCCLA has difficulties finding enough attorneys with the full five years/five trials level of experience to meet the local demand for mentorship and relies on attorneys who have somewhat less experience to serve as junior First Chairs.

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33 HCPDO solicited applications for mentee slots through announcements on HCCLA message boards; requests sent to law schools and professors; making presentations at Houston area law schools; and informing its own interns of the opportunity.

34 Interest areas, for example, could include criminal defense lawyers who work with many non-citizens and focus on the immigration consequences of criminal convictions or criminal defense lawyers who also have a family law practice.

35 See TIDC Mentoring Resources page.
Harris County Public Defender: Future Assigned Counsel Program

DOJ GRANT REPORT FOR YEAR ONE
JESSICA TYLER, DR. TONY FABELO, AND CARL REYNOLDS
VII. Participant Outcomes

As part of this assessment, we spoke to each participant regarding their experiences. Overall, the FACT class had excellent reviews of their experience. The recurrent themes of their assessments not addressed above centered on community creation, professional resource opportunities, and better results on cases.

The FACT program created a Harris County centered community for its participants. Gideon’s Promise has a goal of creating a community, but the opportunity to interact with one another in Houston seemed to reinforce the community feeling for the FACT participants. Literally all nine who completed the program referred to this feeling. They mentioned:

- Still being friends with everyone in the program and doing things together;
- Continuing to stay involved with 2013’s FACT class and reaching out to 2014’s;
- How great it was to have nine other people in similar situations;
- They gained colleagues who face the same challenges; and,
- They recommended the program to friends still in law school.

Participants gained and provided resource opportunities for mentors and other participants. The community went beyond informal support. The participants also gained and provided professional resource opportunities to their compatriots and mentors. Three people mentioned the participant who was involved in a car accident that left her somewhat immobilized for about six weeks. For many on the appointed counsel list, they have no immediate resource for support during illness, but the FACT participants had one another. The court settings for this participant were easily covered by the other FACT participants. Other less dire examples included:

- Discussion regarding prior experience in a specific court or with a specific prosecutor;
- Seeing the group and mentors as a safety net, so if a client asks for help beyond the participant’s scope of knowledge, he does not have to give up the case, because there is a person to turn to;
- Cover each other if they have overlapping responsibilities; and,
- Support one another on cases, for example taking another participant with you to collect witness statements, so there is a backup witness.

Everyone also said how much better their practices and case results were due to participation in the program. Some of the knowledge would have taken much longer to get from practicing alone without input. Feedback included:

- The great results I get from conveying a story would have taken forever without the program;
- I notice other attorneys in court who do not have good story telling skills and my results are better; and
- [Participant] was grateful for the experience and would not be at this level of practice without it.

January 5, 2018

To whom it may concern:

I am the Founder and President of Gideon’s Promise, an organization dedicated to providing training and support to public defenders in some of the nation’s most challenging criminal justice systems. We believe that an army of public defenders, supported by offices with a shared vision, can be the engine necessary to drive justice reform. In 2013, Harris County became the third office in Texas to join our growing community. To date, thirty young lawyers, committed to representing indigent clients in Houston, and the surrounding areas have participated in our “Core 101” Program, which provides ongoing training, mentorship, and support to new public defenders. I could not be more thrilled with this partnership and am hopeful that it will continue to grow. I have watched these attorneys develop both individually and collectively, and I am convinced they will play a critical role in the effort to improve the representation of poor people in Houston.

Each year we welcome a new class of public defenders. The class goes through an intensive, 14-day, public defender boot camp together. During these two weeks, they learn lawyering skills, study the ethics and values fundamental to the work, and develop a supportive community. The lawyers then become part of a larger community of hundreds of public defenders, that they reconvene with every six months. In between meetings, they stay connected through an electronic community that shares resources and supports one another. They are also assigned mentors from our team of faculty.

The program not only teaches lawyers the skills they need to effectively represent clients; it also instills a spirit in the lawyers to push back against the many systemic pressures that so often drive public defenders to quit or to become resigned to substandard level of justice.

Harris County has been our first partnership through which we work with assigned counsel who are not part of a full-time public defender program. We agreed to work with these lawyers because of the thoughtful support system Alex Bunin put together through the FACT Program. We could not be happier with the partnership.

Mr. Bunin has put a lot of thought into recruitment for this partnership. Each of the thirty lawyers from Houston have been enthusiastic. The curriculum is intense and comprehensive. The Houston lawyer have been among the hardest workers in the program. In fact, the Houston crew within each of their respective classes have really been leaders in the group. Their spirit and dedication is palpable and infectious. We are grateful for the partnership and hope to foster more in its mold as we grow.
Each new class gets a class t-shirt with a unique quote on the back. The Class of 2017 (named by the year they begin) were given shirts with the quote: “It was as though scales had fallen from my eyes and I could no longer remain blind. I saw humanity.” This quote is from Temi Siyanbade one of the Houston members of the Class of 2014. We chose this quote because it reflects the spirit at the heart of our mission. As public defenders, we learn the stories of people who have been rendered invisible. We develop the heart-set and the skill-set to force the system to see their humanity. Only then will we begin to move towards a more just system.

Temi’s quote embodies that ideal. However, it not only reflects her motivation for being a part of this community; it reflects a collective vision that the Houston lawyers have for the future of indigent defense in Harris County. If Gideon’s Promise is an army of advocates working together to raise the standard of justice for the poor, these lawyers have become a small army within the army, committed to making justice reality in Houston.

We are thrilled to partner with Houston and hopeful the collaboration will expand in the future.

Sincerely,

Jonathan A. Rapping
President
January 2, 2018

To Whom It May Concern:

I am writing to encourage you to recognize the Harris County Future Appointed Counsel Training Program (“FACT”) as an Exemplary Defense Project, because it is one. With your kind patience, I would like to share my personal experience so that you might understand why I hope you will recognize FACT.

When I went to law school, I didn’t know anyone who was an attorney. Until the semester before, I had thought I was going to be a literature professor, but frustration with the academic community and a desire to do something more meaningful than write critiques of how Nabokov hated Freud made me decide to jump ship and take the LSAT. I knew that I would go into criminal defense. I love stories and people, and I have a penchant for always rooting for the underdog that I thought would help me fit in nicely. I took the criminal trial advocacy classes, the clinics, the criminal law electives, interned at the right places, and then I graduated from law school in 2012.

Houston is a particularly difficult place for young attorneys to start a criminal defense practice for a lot of reasons. Getting on court-appointed lists or being considered for a rare job at the Public Defender’s Office both require experience, specifically trial experience, but crowded dockets make trials hard to come by, especially when you’re just starting out and don’t have very many cases. It feels very lonely. It feels like you’ve made a horrible decision, and maybe you should have listened to your dad and tried to get a job in insurance defense, or at a huge, faceless personal injury firm. But the truth is that it’s not unique to you. You just have to figure out what’s next.

For me, and nine other lucky young lawyers going through exactly the same thing as I was, FACT was next. I had spent the last three years of law school knowing exactly what I needed to do the next day: wake up, go to school, study, repeat. Now that I was out and the bar was over and I was a lawyer it seemed much less certain. Being picked to be part of FACT was a huge boost to my confidence: not only did I think I should be a criminal defense lawyer, but people who know what they were talking about did, too.

Law schools tell students to “network” constantly, but “networking” is hard to do when you don’t know anyone. The first thing FACT did was to help me with a place to start. Suddenly, I went from being a person who knew zero lawyers to a person who had the cell numbers of some of the most influential criminal defense attorneys in Houston programmed into my phone. I shared coffee and cocktails and inside jokes and war stories with people who I had only hoped I might shake hands with one day, and they really cared about me and about the small list of clients I was developing. Many of the relationships I had with those mentors have blossomed now, four years later, into full-fledged friendships that have benefitted me in my personal life in addition to my professional life.

That summer, I spent two weeks at Gideon’s Promise Boot Camp. There, I learned that it was ok to fall and I learned how to fall, and how to get back up. I learned motion practice and how to object and how to negotiate. I learned a
lifetime’s worth of skills that I would have otherwise had to learn by making mistakes with people’s lives. I learned to sublimate my ego to the best interest of my client.

It was six months later, at a follow-up Gideon’s Promise conference in Atlanta, Georgia, with the encouragement of my colleagues and friends, that I applied for a listing as a public defender in Palau, a small island nation in Micronesia. Several months later, on my way home from having drinks with a FACT mentor, I found out that I had gotten the job.

For nearly two years I practiced abroad, in a place with few resources and where the type of poverty experienced by my clients was beyond compare. I cannot imagine that experience had I not gone through FACT. Six months after I got to Palau, I was promoted to Chief Public Defender. The cases I ended up handling there were more serious in number and in nature than any two-year lawyer should have been tasked with, especially with no supervision or direction, but I had mentors across the world who were willing to help me, one of whom even flew over to support me during one of my most difficult periods.

I returned to Texas almost exactly two years ago today. After working for the Fort Bend County Public Defender’s Office right outside of Houston, I now find myself at the Public Defender’s Office in Aztec, New Mexico, a small town close to reservation land. Once again, my clients experience a type of abject poverty that means that courts can’t really have dress codes, because some of our clients can’t afford shoes. We have no training to speak of, and no budget for training. Our office struggles with a huge caseload and too few lawyers and an abysmal attrition rate among the lawyers we do have. I juggle my outrageously stressful job with my six-month-old daughter, an increasing and never-ending amount of housework, and the paralegal classes I teach on the side to try and make ends meet. If I had not participated in FACT in Houston, there is nothing my current office could have offered me in its place, and there is no way I would be able to do the work that I do.

Being an indigent defender on a good day is hard. The zealous glow of the law student, excited to tame injustice with a sword of right, quickly dims in the face of representing a client on his tenth DWI who spits at you and asks where the real lawyer is when he meets you. Being able to do this job for the long-haul with any compassion and verve requires a harder kernel of motivation deep within, that can’t be disappointed or wearied or withered by failure. The FACT program recognizes young lawyers who have that thing inside of them and offers them the things they need to nurture it.

Please do not hesitate to contact me should you have any further questions or concerns.

Very Truly Yours,

[Signature]

Allison Jackson Mathis
Assistant Public Defender
Allison.jackson@lopdnm.us
Cell: 832/269/6050
January 6, 2018

Re: Harris County Public Defender’s Future Assigned Counsel Training (FACT) Program

To Whom it May Concern:

I have been a criminal-defense lawyer for twenty-two years. For the bulk of that time I have been mentoring young lawyers through my own practice, through local law schools, through bar associations, and through the Harris County Public Defender’s Future Assigned Counsel Training (FACT) program.

The combination of Gideon’s Promise’s initial training, Gideon’s Promise follow-up training, and local support and mentoring (including, now, by FACT alumni) makes FACT the finest criminal-defense lawyer mentoring program I have seen.

FACT alumni demonstrate the value of the program every day with their zealous and effective representation of the accused. I refer cases to FACT alumni often, and my trust in them is repaid by the exceptional work they do for the accused.

Please call me if you would like to hear more gushing praise for the FACT program.

Thank you,

Mark W. Bennett